



321748

Record of Congressional Telephone Conversation - Region 5

SUBJECT: WAUKEGAN SUIT AND CLEANUP

ID #: 192

CONGRESSIONAL:

DATE:

12/03/2008

CONTACT: AARON WINTERS

PHONE NUMBER:

847-940-0202

OFFICE: REP. KIRK

STATE: IL

ACTION FLAG:

N

CONTACTS: KEVIN ADLER 6-7078; TOM MARTIN

DATE RESPONDED:

12/05/2008

SUMMARY:

Aaron called and sent the following email:

Mary/Kevin –

Does the news below change EPA's plans to proceed on the current path for cleaning up the harbor?

Thanks,

Aaron

Aaron R. Winters
Congressman Mark Kirk
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News Sun: Waukegan can pursue harbor cleanup suit

WAUKEGAN -- City officials reported late Tuesday that their court battle to force Seahorse Drive businesses to fund a cleanup of Waukegan Harbor was given a boost last week in federal court.

In September, the lawsuit filed in 2007 against such harbor businesses as Bombardier Motor Corp., Lafarge North America Inc. and National Gypsum Co. stalled when U.S. District Court Judge Matthew F. Kennelly dismissed all claims.

But in a statement released Tuesday afternoon, city officials said "in a stunning reversal, last week the judge found that the harbor industries can be liable for the cost of cleaning up the OMC Superfund Site, which includes the harbor and former (Outboard Marine Corp.) North Plant."

The statement added that Kennelly "previously ruled that the City's claims against Bombardier (could) also proceed forward."

Tuesday's news came after the U.S. Environmental Protection Agency announced in October that it would proceed with a \$34 million cleanup of polychlorinated biphenyls (PCBs) in the harbor.

The city contends that the PCBs, originally dumped in the water by now-defunct OMC, have been dispersed throughout the harbor by prop wash from boats used by shoreline industries.

RESPONSE:

12/3: I spoke with Kevin who told me that he didn't think it would impact our moving forward on our

plan to address the Harbor. We are currently seeking comments on the proposed plan. He suggested that I speak with Tom Martin (ORC) re: the legal interpretation. I sent a copy of Aaron's inquiry to Tom M.

I left a voice mail message for Aaron that we are seeking ORC's input on his question. I then received this additional inquiry, which I sent to Kevin and Tom.

Mary – got your voicemail – thank you. We'll wait to hear what the attorneys say.

We'd also like to get their feedback on any historical precedents for injunctions to halt the implementation of a Record of Decision. Basically – is the proposed cleanup in jeopardy if the city tries to take EPA to court while their litigation goes forward.

Thanks,

Aaron

12/3: I received a reply that Tom M. is out of the office until 12/5 and sent Aaron this email:
Aaron,

I just learned that the attorney assigned to Waukegan Harbor is out until Friday. I will talk with him on Friday and let you know when we can get you answers to your questions. Thanks.

12/5: After speaking with Tom M. I called Aaron and told him that the City's action doesn't affect our process or diminish our ability to implement a remedy at Waukegan Harbor. In response to Aaron's second question, I told him that Tom didn't have any personal experience on a ROD challenge and hadn't researched this question, but that generally a ROD would have to be determined to be inconsistent with the NCP to be halted.

Recorded By: Mary Canavan